



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2005 FEB 16 AM 9:47

Docket No.: SDWA-08-2004-0057

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

Tom Brown, Inc.

Respondent.

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CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent EnCana Oil & Gas (USA) Inc. (EnCana), successor by merger to Tom Brown, Inc. (EnCana/Tom Brown), by their undersigned representatives, hereby consent and agree as follows.

BACKGROUND

1. EPA issued to Tom Brown, Inc. a Proposed Administrative Order with Administrative Civil Penalty and Notice of Opportunity to Request a Hearing (Complaint) (PAO) filed on September 28, 2004, alleging certain violations of Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h et seq., relating to underground injection controls (UIC).
2. Tom Brown, Inc. was merged into EnCana effective January 1, 2005 and accordingly, EnCana is responsible for the obligations of Tom Brown, Inc., as they relate to this matter. Certificate of Merger documents are attached hereto as Attachments 1 and 2.
3. The PAO alleged that EnCana/Tom Brown violated the SDWA by

(a) exceeding the maximum allowable injection pressure at the Tribal PN #16-34 Salt Water Disposal Well (16-34 well); (b) failing to comply with annual listing of sources of injected fluid required in the 16-34 well permit; (c) failing to comply with fluid analysis reporting requirement in the 16-34 well permit; (d) failing to comply with 40 C.F.R. §144.51(e) and the 16-34 well permit requirements to maintain wellhead equipment in good working order; (e) failing to comply with the requirement to demonstrate the 16-34 well's "external mechanical integrity"; and (f) failing to comply with the requirement prohibiting injection into the well that lacks mechanical integrity. The location of the 16-34 well is inside the exterior boundaries of the Wind River Indian Reservation, Fremont County, Wyoming.

4. In response to the PAO, EnCana/Tom Brown met informally with EPA and submitted new and additional information for EPA to consider regarding the bases of its allegations. Such information included (a) a temperature log and radioactive tracer log conducted in the 16-34 well between November 30 and December 2, 2004, (b) a compliance plan developed to ensure EnCana/Tom Brown remains in compliance with the 16-34 well's permit, (c) a set of daily injection pressure records spanning the months March 2002 through January 2003, and (d) a list of sources of fluid injected covering the years 2001,

2002 and 2003.

5. To resolve this matter, the parties agree to a settlement requiring EnCana/Tom Brown to pay a penalty in the amount of \$42,500.00 (forty-two thousand, five hundred dollars). EPA finds this penalty amount is appropriate, taking into consideration the statutory factors in Section 1423(c)(4)(B) of the SDWA; EPA's Underground Injection Control Penalty Policy; the new and additional information described in paragraph 4, above; and other relevant factors. The penalty shall not be tax deductible by EnCana/Tom Brown.
6. EnCana/Tom Brown admits that EPA has the jurisdictional authority to issue the PAO and settle this case pursuant to this Consent Agreement, but does not confirm nor deny the remaining allegations, including the findings and alleged violations.
7. This Consent Agreement applies to and is binding upon EPA and upon EnCana/Tom Brown and EnCana/Tom Brown's successors and assigns. Any change in ownership or corporate status of EnCana/Tom Brown including, but not limited to, any transfer of assets of real or personal property shall not alter EnCana/Tom Brown's responsibilities under this agreement.
8. EnCana/Tom Brown waives its right to contest any issue of

law or fact set forth in the PAO and knowingly agrees to waive its right to a hearing on this matter under section 1423(c)(3)(a) of the SDWA, 42 U.S.C. 300h-2(c)(3)(a), and to appeal this matter under SDWA section 1423(c)(6), 42 U.S.C. 300h-2(c)(6).

TERMS OF SETTLEMENT

Civil Penalty

9. EnCana/Tom Brown consents to the issuance of the Consent Agreement and for the purposes of settlement to the payment of the above-cited civil penalty.
10. EnCana/Tom Brown shall, not more than 30 (thirty) calendar days after the date of the signed Final Order in this matter, submit a cashier's or certified check in the amount of amount of \$42,500.00 (forty-two thousand, five hundred dollars), payable to "Treasurer, United States of America" to:

EPA - Region 8
Regional Hearing Clerk
Post Office Box 360859
Pittsburgh, Pennsylvania 15251.

11. A copy of the check identified in paragraph 10 shall be simultaneously mailed to the following addresses:

Tina Artemis, Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
999 18th Street, Suite 300

Denver, Colorado 80202-2466, and

Jim Eppers, Senior Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

12. EnCana/Tom Brown further agrees and consents that if EnCana/Tom Brown fails to pay the penalty in accordance with the terms of paragraph 10, the amount of \$70,574.00 (seventy thousand, five hundred and seventy four dollars) less any payments made, if any, shall be due and owing. Interest on this amount shall accrue at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first 30 calendar days that the payment, or any portion thereof, is overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payment due is made.

GENERAL PROVISIONS

13. This Consent Agreement contains all the terms of the settlement agreed to by the parties.
14. Nothing in this Consent Agreement shall relieve EnCana/Tom Brown of the duty to comply with the SDWA and its


implementing regulations.

15. Failure by EnCana/Tom Brown to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
16. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of EnCana/Tom Brown's failure to perform pursuant to the terms of this Agreement.
17. The undersigned representative of EnCana/Tom Brown certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind EnCana/Tom Brown to those terms and conditions.
18. Each party shall bear its own costs and attorneys fees in connection with this matter.
19. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

20. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the PAO.

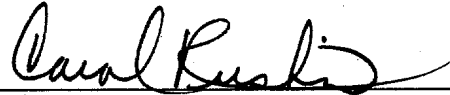
EnCana Oil & Gas (USA) Inc., successor by merger to Tom Brown, Inc.

Date: 2/4/05

By: 
James Walcutt
Attorney in Fact

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: 2/10/05

By: 
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Delaware

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The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"TBI PIPELINE COMPANY", A DELAWARE CORPORATION,

"TBI WEST VIRGINIA, INC.", A DELAWARE CORPORATION,

"TOM BROWN, INC.", A DELAWARE CORPORATION,

WITH AND INTO "ENCANA OIL & GAS (USA) INC." UNDER THE NAME OF "ENCANA OIL & GAS (USA) INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-SECOND DAY OF DECEMBER, A.D. 2004, AT 6:15 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE FIRST DAY OF JANUARY, A.D. 2005.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



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Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3584585

DATE: 12-29-04

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FAX NO. 3038322366

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State of Delaware
Secretary of State
Division of Corporations
Delivered 06:15 PM 12/22/2004
FILED 06:15 PM 12/22/2004
SRV 040934710 - 2137895 FILE

**STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC CORPORATIONS**

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is EnCana Oil & Gas (USA) Inc., and the names and jurisdictions of the corporations being merged into this surviving corporation are as follows:

Name
Tom Brown, Inc.
TBI Pipeline Company
TBI West Virginia, Inc.

Jurisdiction of Incorporation
Delaware corporation
Delaware corporation
Delaware corporation

SECOND: The Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is EnCana Oil & Gas (USA) Inc., a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The merger is to become effective on January 1, 2005.

SIXTH: The Agreement and Plan of Merger is on file at 950 17th Street, Suite 2600, Denver, Colorado 80202, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 17th day of December, A.D., 2004.

ENCANA OIL & GAS (USA) INC.

By Mary A. Viviano
Mary A. Viviano, Secretary


CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **Tom Brown, Inc., DOCKET NO.: SDWA-08-2004-0057** was filed with the Regional Hearing Clerk on February 16, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to James Eppers, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on February 16, 2005, to:

Mary Viviano, General Counsel
Tom Brown, Inc.
950 17th Street, Suite 2600
Denver, CO 80202

February 16, 2005


Tina Artemis
Regional Hearing Clerk

